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11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 OAKLAND DIVISION

14 UNITED STATES OF AMERICA,  
15 Plaintiff,  
16 v.  
17 D'MARCO HAL,  
18 Defendant.

Case No.: CR 20-00471 YGR

**SENTENCING MEMORANDUM AND  
MOTION FOR DOWNWARD  
VARIANCE**

**Court:** Courtroom 1, 4<sup>th</sup> Floor  
**Hearing Date:** June 24, 2021  
**Hearing Time:** 9:00 a.m.

19 **I. INTRODUCTION**

20 Defendant D'Marco Hal will appear before this Court on June 24, 2021, to plead guilty to being  
21 a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). He will be sentenced  
22 immediately following his guilty plea. Mr. Hal is still a very young man at 22 years old. He was  
23 raised by an alcoholic mother, who was both abusive and neglectful towards her children, and who  
24 herself was physically abused, first by their father who was a heroin addict who was in and out of jail,  
25 and later by boyfriends, all of whom would beat their mother in front of Mr. Hal and his siblings. Mr.  
26 Hal, being the oldest sibling, took on the responsibility of caring for his two younger brothers and  
27 food and housing were constant issues. As is too often the case for those growing up in such an  
28

1 environment, Mr. Hal was exposed to a number of adverse childhood experiences (ACE's) including  
2 violence, neglect, alcoholism and drug addiction, food and housing insecurity, and other dysfunction.  
3 Mr. Hal desperately wants to change his life. At the time of the offense, Mr. Hal had enrolled in  
4 barber college and was also caring for his son. However, he wanted to visit people who had been  
5 close to his brother, Deangelo, who died while Mr. Hal was in custody even though he had previously  
6 been shot in that neighborhood and did not feel safe there. He possessed a firearm in order to feel  
7 safe. As he told the probation officer, he "should have been home." Instead, Mr. Hal will plead guilty  
8 to a new crime and he has served almost one year in custody thinking about his poor choices.

9       The probation officer who wrote the Presentence Report (PSR) recommends that the Court vary  
10 downward from the advisory guideline range of 37-46 months, and impose a sentence of 30 months  
11 custody. PSR, Sentencing Recommendation. The government agrees that a custodial sentence is  
12 appropriate but makes no specific recommendation as to how much time is appropriate. *See*  
13 Government's Sentencing Memorandum ("Govt. Memo") at p.2. Mr. Hal agrees that a downward  
14 variance is appropriate but asks the Court to vary further and impose either a custodial sentence of 12  
15 months plus one day (which would effectively be a "time served" sentence), or a sentence of five  
16 years of probation with a condition of home detention for whatever period of time the Court deems  
17 appropriate.

18       A sentence of twelve months plus one day custody is consistent with the government's  
19 recommendation that the Court impose a custodial sentence. On the other hand, imposition of a five  
20 year term of probation is more onerous on Mr. Hal in that it would allow the Court to impose five,  
21 rather than three, years of supervision and expose Mr. Hal to the same 37-46 month guideline range  
22 (and statutory maximum of ten years imprisonment) that he faces today, were he to violate his  
23 probation at any time during those five years. A defendant who violates probation faces resentencing  
24 under the original sentencing guidelines and statutory maximum, while penalties for a violation of  
25 supervised release is limited to a maximum of two years custody and a considerably lower guideline  
26 range. Thus, requesting a sentence of probation in lieu of a custodial sentence of 12 months plus one  
27 day only makes sense for an individual who has the potential and motivation to succeed. Mr. Hal's  
28 letter to the Court, as well as the letters and statements of others who know him well, indicate that

1 Mr. Hal should be given the opportunity to demonstrate this to the Court. However, should the Court  
2 determine that imposition of a custodial sentence is more appropriate (as requested by the  
3 government), a sentence of 12 months plus one day is sufficient but not greater than necessary. It is  
4 also a sentence which is consistent with the government's sentencing recommendation. Further, a  
5 period of home detention could still be imposed as a condition of supervised release, should the Court  
6 determine that this additional restriction is warranted

7 Either a custodial sentence of 12 months plus one day or a sentence of five years probation is  
8 sufficient, but not greater than necessary to account for the sentencing factors set out in 18 U.S.C.  
9 §3553, including Mr. Hal's history and characteristics, his youth, the nature and circumstances of the  
10 offense, and the need to avoid unwarranted disparities among other factors. Intensive rehabilitative  
11 programming, including group and individual counseling, drug treatment, cognitive behavioral  
12 therapy, meetings and employment training is a far more effective tool in combating Mr. Hal's  
13 chaotic and dysfunctional upbringing and reducing the possibility of recidivism. While the Court may  
14 determine that a custodial sentence is appropriate in this case, a sentence of five years probation  
15 carries a very large stick because the imposition of 37 – 46 months custody and up to ten years  
16 imprisonment still hangs in the balance, should Mr. Hal not be successful on supervision.

17 Mr. Hal files this sentencing memorandum in support of his sentencing request. Attached as  
18 exhibits to the sentencing memorandum are (1) letter from D'Marco Hal (Exhibit A); (2) letter from  
19 Shanvoni Keeton (Exhibit B); (3) letter from Djhonnay Jackson (Exhibit C); (4) letter from Javier  
20 Jimenez (Exhibit D); (5) Adverse Childhood Experience (ACE) Questionnaire completed by  
21 D'Marco Hal (Exhibit E); (6) Newspaper Article regarding the accidental death of Hal's brother  
22 (Exhibit F); (7) Photos of D'Marco Hal, Jeriesia Caldwell and their son D'Marco (Exhibits G-1, G-2  
23 and G-3). Also filed concurrently are Declaration of Madeline Larsen in Support of Sentencing  
24 Memorandum and Downward Variance (Larsen Decl.) and Declaration of Joyce Leavitt in Support of  
25 Sentencing Memorandum and Downward Variance (Leavitt Decl.)

26 **II. STATEMENT OF FACTS**

27 **A. Personal Background**

28 D'Marco Hal is a 22 year old young man who was raised primarily in Oakland by his mother

1 after his father left when he was seven years old. PSR at ¶40. Mr. Hal's father was a heroin addict  
 2 who was in and out of custody when Mr. Hal was growing up, and when he was around, he was  
 3 physically abusive to Mr. Hal's mother, as well as to Mr. Hal and his brothers. *Id.* at ¶¶40-42. Mr.  
 4 Hal remembers a particular instance when his father dragged his mother into the bathroom and beat  
 5 her with one of his brother's toys. *Id.* at ¶41. According to a complaint filed with the Alameda county  
 6 social services agency in 2004, when Mr. Hal was just six years old, "the children were exposed to  
 7 domestic violence, and the father was violent with the children, including having hit the 4 year old's  
 8 head against a bedpost." Leavitt Decl. at ¶6. The neglect and abuse which was suffered by Mr. Hal  
 9 and his younger brothers was both chronicled in the social services agency complaint and juvenile  
 10 court records, and corroborated by Mr. Hal's aunt, Shameeka Hayes, and others. *See, e.g.*, Leavitt  
 11 Decl. at ¶5; Larsen Decl. at ¶¶3-8.

12 According to Mr. Hal's aunt, Mr. Hal had a "rough childhood – really rough." *Id.* at ¶¶3-8. His  
 13 mother was 16 years old, and he witnessed her being abused by his father as well as by boyfriends  
 14 including one boyfriend who left her with broken bones. *Id.* at ¶5. Mr. Hal's mother was often  
 15 homeless, and if not homeless, just moving from place to place. *Id.* at ¶5. She was a heavy drinker  
 16 and at one point she was on drugs. *Id.* Furthermore, Mr. Hal reported that he was around 10 years old  
 17 when he realized that his mother had an alcohol problem. PSR at ¶42. She would constantly drink in  
 18 front of her children. *Id.* She would often sleep for several days at a time. *Id.* Mr. Hal and his  
 19 brothers would dump the alcohol when she was not watching. *Id.* On one occasion he was caught and  
 20 his mother threw noodles hot out of the microwave in his face. *Id.*

21 As the oldest brother, Mr. Hal took responsibility for his younger brothers from the time that he  
 22 was 10 years old (in fifth grade). *Id.* at ¶43. Mr. Hal's aunt corroborated the fact that Mr. Hal cared  
 23 for his younger brothers from a very young age, stating "he got them up, fed, and ready for school.  
 24 He would take them to school or make sure they got on the bus." Larsen Dec. at ¶9. Mr. Hal "did the  
 25 cooking and made sure they ate and that their clothes were 'nice and clean and presentable.'" *Id.* He  
 26 "would also take them to church." *Id.* Sheemeka Hayes stated that she would see Mr. Hal and his  
 27 brothers out on the streets of Oakland alone. *Id.* at ¶10. She further stated that "if you saw them you  
 28 would wonder what they were doing on 98<sup>th</sup> Avenue without their mom. . . but. . . they would just be

1 going about their business . . . everyone knew the Hal brothers. They were always out and about.” *Id.*  
 2 Jeresia Caldwell also described Mr. Hal as filling the role of parent to his younger siblings and  
 3 remembers that Mr. Hal “always had his youngest brother on his hip.” *Id.* at ¶20.

4 It is not a surprise, however, that with this kind of upbringing, Mr. Hal found himself in the  
 5 criminal justice system at an early age.<sup>1</sup> When Mr. Hal was in 8<sup>th</sup> grade, he started staying with his  
 6 aunt, on and off, for a period of time. Larsen Decl. at ¶11. His grades improved, and he thrived with  
 7 the structure. *Id.* However, when the courts allowed Mr. Hal to start seeing his mother and having  
 8 weekend visits with her, his behavior worsened, and eventually he was not able to stay with his aunt  
 9 any longer. *Id.* Mr. Hall started getting into trouble again and by the time he was 18 years old, he was  
 10 in custody. PSR at ¶¶30, 31.

11 While Mr. Hal was in custody, his younger brother was playing with a gun and accidentally shot  
 12 and killed himself. PSR at ¶45; Exhibit F. At the time, the family had been homeless, and Mr. Hal’s  
 13 brother had been sleeping in cars and at friends’ homes before he died. Larsen Decl. at ¶21. Mr. Hal  
 14 blamed himself for not being there to protect him. Mr. Hal learned about his brother’s death through  
 15 the mother of his child when he called her from jail and was devastated. PSR at ¶45.

## 16       B.     Mental Health

17 Being surrounded by abuse and neglect, while also tasked with caring for his younger brothers,  
 18 unsurprisingly, affected Mr. Hal’s mental health. A psychological evaluation prepared in 2012 stated  
 19 “It is clear that the trauma . . . has left a lasting affect on D’Marco . . . [who] was very parentified and  
 20 . . . made to be responsible as the caretaker of his younger siblings.” Leavitt Decl. at ¶3. The report  
 21 further stated that Hal “experience[d] symptoms of depression, low self-esteem, withdrawal and  
 22 trauma history” and concluding that “the lack of consistency by his mother, her repeated history of  
 23 being in violent and abusive relationships, and inability to parent effectively, appears to have

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 26       <sup>1</sup> Mr. Hal has a juvenile offense from when he was 12 years old, which is described in the PSR at  
 27 ¶27. A probation report prepared at the time described the living situation as “troubling,” and noting  
 28 that “four families and a total of 16 individuals were living in a two bedroom home.” Leavitt Decl. at  
 ¶14. All of the minors involved in the offense, including a 16 year old co-defendant, were staying at  
 the house. *Id.* It is unclear whether all adults staying there were abusing substances like Mr. Hal’s  
 mother at the time but it would not be a stretch to presume that this was essentially a flop house with  
 little or no supervision.

1 profoundly affected D'Marco." *Id.* The evaluator recommended "intensive, long term therapy to deal  
 2 with his family dynamics and exposure to trauma." *Id.* Although he had weekly counseling for two to  
 3 three months when he was around 12 -14 years old, PSR at ¶55, Mr. Hal did not have intensive, long  
 4 term therapy to address the ongoing, more complicated issues.

5 Mr. Hal was also seriously traumatized by the death of his brother who was two years his  
 6 junior. PSR at ¶45. Growing up, Mr. Hal had protected and cared for his younger brother as best he  
 7 could. He was in custody at the time of his brother's death and was so devastated by the news that he  
 8 contemplated suicide. *Id.* He felt guilty and distraught that he had been unable to protect his younger  
 9 brother. PSR at ¶55. Almost four years have passed since Mr. Hal's brother's death. Exhibit F. Mr.  
 10 Hal has never received mental health counseling to address this trauma and it continues to affect him.  
 11 *Id.; See also* Larsen Decl. at ¶21 ("Hal was heavily impacted by the death of his brother and . . .  
 12 would benefit from therapy to help . . . with his deep grief.")

13 Undoubtedly, Mr. Hal's adverse childhood experiences have shaped him, as he continues to  
 14 struggle with the very heavy burdens which were placed on him starting when he was a very young  
 15 child. This ongoing trauma also contributed to the offense conduct in that Mr. Hal felt compelled to  
 16 return to the same neighborhood where his brother, Deangelo died, and visit with Deangelo's friends,  
 17 in order to feel connected to the little brother that he lost so suddenly. PSR at ¶14 (Hal "missed being  
 18 around the people he knew and knew his deceased brother as well."). Mr. Hal connected with old,  
 19 bad influential friends, and felt the need to carry a gun because he was visiting an area where he had  
 20 previously been shot. *Id.* Mr. Hal recognizes the connection between the trauma and the current  
 21 offense. *Id.* He is asking for counseling and treatment. Exhibit A. All who know Mr. Hal describe  
 22 him as a caring friend, a person with a big heart and an individual with talent and potential. *See, e.g.*  
 23 Exhibit B, Exhibit C, Larsen Decl. at ¶¶14, 15, 22, 24. Mr. Hal needs programming and treatment to  
 24 address his mental health issues so that he can continue to be an asset to his friends and family but  
 25 also law-abiding.

26 **C. Future Goals**

27 Although Mr. Hal is just 22 years old, his letter to the Court demonstrates that he has insight  
 28 into why he committed the offense, how his actions have failed those who depend upon him, and

1 what his goals are for the future. Exhibit A. Mr. Hals writes:

2  
3 I'm currently enrolled in barber & cosmo college. I've asked myself the  
4 same question you are probably thinking. Why give up something that can  
5 be looked upon as an achievement and a career to be sitting in jail with  
6 people who don't care about their own lives. The only answer I can come  
7 up with is the way I grew up and the toxic environment I've been exposed  
8 to at a young age installed in my mind certain tools to survive were [sic]  
9 im from. A lot of people don't grow to see my age in Oakland. We lack  
10 on role models & inspiration . . . when I make a mistake its not because I  
11 don't care . . . I have real goals and real responsibilities. My son & his  
12 mother looks at me for guidance, stability and protection and I continue to  
fail them. My mother lost my little brother 4 years ago . . . she clearly  
needs me and I failed her. I have a G.E.D. and was soooo proud of myself  
when I got it, but the messed up part about it is I can't do nothing in jail  
with a G.E.D. Those don't matter in here. I turn 23 years old in July and  
can't even say I've been out of jail for a full year since I was 13 . . . my  
little brother is gone and I can't even consider my life as living for him  
and my baby brother goes to college next year and I've never been to 1 of  
his football games . . . im done with coming back and forth to jail. Im not  
my father im better than him and one day I will be able to prove it.

12 Exhibit A.

13 After he is released from custody, Mr. Hal plans to finish the barber school & cosmetology  
14 college which he had enrolled in prior to his arrest. PSR at ¶50. Mr. Hal initially cut his friend's hair  
15 after watching YouTube videos because his friend couldn't afford a haircut the day before school  
16 started. Exhibit B. After he had enrolled in barber college, Mr. Hal's aunt overheard one of his  
17 teachers at the barber college complimenting Mr. Hal stating that "he had a natural knack for doing  
18 hair." Larsen Decl. at ¶13.

19 Mr. Hal also hopes to move to Las Vegas, where his grandmother and youngest brother live, so  
20 that he can get away from the bay area where he has struggled, and be closer to his support system.  
21 Jeriesia Caldwell, the mother of Mr. Hal's son, has indicated that she plans to move to Nevada with  
22 Mr. Hal and their son so that they can set up a new life there. Larsen Decl. at ¶25.

23 Most important to Mr. Hal, he intends to be a good role model and father to his son. Exhibit A  
24 ("Im not my father im better than him and one day I will be able to prove it."). In his conversation  
25 with the probation officer, Mr. Hal indicated that listening to his son's voice every day has kept him  
26 going while in custody. *Id.* at ¶45. By all accounts, Mr. Hal is a dedicated and caring father. Exhibit  
27 B ("D'Marco is. . . one of the best dads I've ever seen. Whenever I call him, his son is right by his  
28 side."); Larsen Decl. at ¶12 (Mr. Hal "is a great father to his son. . . teaches him 'all the little things'

he needs to do . . . tries to be present and spend time with him. . . does the things that a parent does with his child. . . his son . . . is his driving force.”); Larsen Decl at ¶23 (“D’Marco is a great dad. I’m amazed.”). According to Jeriesia, Mr. Hal was incarcerated when his son was born, but came home and “dedicated himself to his son.” *Id.* Jeriesia stated that Mr. Hal loves being a father and wants to take good care of her and his family. *Id.* The pictures of Mr. Hal and his family, and the expression on Mr. Hal’s face as he holds his child, make it clear how much he adores him. Exhibit G1-3. Mr. Hal’s son is a powerful motivation for Mr. Hal to stay on track with programming and treatment.

### III. DISCUSSION

#### A. A Sentence of Twelve Months Plus one Day Custody or Five Years Probation is Sufficient But Not Greater Than Necessary

The Supreme Court’s decisions over the last decade have dramatically altered the district court’s role at sentencing. *See United States v. Booker*, 543 U.S. 220 (2005); *Kimbrough v. United States*, 552 U.S. 85 (2007); *Gall v. United States*, 552 U.S. 38 (2007). Taken together, these cases make it clear that district court judges now have the ability – as well as the duty – under 18 U.S.C. § 3553 to exercise judgment and discretion in arriving at a sentencing determination. Although “district courts still ‘must consult [the] Guidelines and take them into account when sentencing,’” *United States v. Cantrell*, 433 F.3d 1269, 1279 (9th Cir. 2006) (quoting *Booker*, 543 U.S. at 224), they “may not presume that the Guidelines range is reasonable,” *Gall*, 552 U.S. at 50 (citing *Rita v. United States*, 551 U.S. 338 (2007)). Furthermore, the guideline range may not be weighed more heavily than any other statutory factor. *Gall*, 552 U.S. at 50; *Carty*, 520 F.3d at 991.

The Court must consider the advisory guidelines range, the nature and circumstances of the offense, the history and characteristics of the defendant and the need to avoid unwarranted sentence disparities among similarly situated defendants. 18 USC § 3553(a)(1), (a)(4) and (a)(6). In crafting a sentence that is “sufficient but not greater than necessary,” to comply with the purposes of 18 USC § 3553(a), the Court must consider the need for the sentence imposed to (A) reflect the seriousness of the offense, promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; and (C) to protect the public from further crimes of the defendant. 18 USC § 3553(a)(2).

Within the last few years, there has been widespread recognition that programming and

1 treatment may be a more effective way to address recidivism than prolonged custody. For example,  
 2 the bi-partisan enactment of the First Step Act in December 2018, which provides for incentives for  
 3 individuals to participate in increased programming to reduce custodial sentences and underscores the  
 4 fact that even in politics, where there has been little consensus on anything, there has been  
 5 recognition across political lines that rehabilitative programming is a more effective way to reduce  
 6 recidivism than incarceration.

7 Those who know Mr. Hal can attest to the fact that he has potential to change, but requires  
 8 assistance. *See, e.g.* Larsen Decl. at ¶¶14-16, 25; Exhibit C; Exhibit D. In light of Mr. Hal's potential  
 9 and desire to change, a downward variance to a sentence of 12 months plus one day of custody or  
 10 five years probation (either of which can be combined with a condition of home detention), with a  
 11 focus on programming rather than additional custody, is appropriate.

#### 12       **B.     Mr. Hal's History and Characteristics Warrant the Requested Variance**

13       Under 18 U.S.C. § 3553(a), Mr. Hal's history and characteristics should also be considered.  
 14 "Evidence about the defendant's background and character is relevant because of the belief, long held  
 15 by this society, that defendants who commit criminal acts that are attributable to a disadvantaged  
 16 background, or to emotional and mental problems, may be less culpable than defendants who have no  
 17 such excuse." *California v. Brown*, 479 U.S. 538, 545 (1987)(O'Connor, concurring). Furthermore,  
 18 the Ninth Circuit has determined that lack of guidance as a youth may be mitigating factors which  
 19 render a defendant less culpable. *United States v. Floyd*, 945 F.2d 1096 (9<sup>th</sup> Cir. 1991); *United States*  
 20 *v. Walter*, 256 F.3d 891 (9<sup>th</sup> Cir. 2001). In this case, it is irrefutable that Mr. Hal lacked guidance as a  
 21 youth and his offenses are directly attributable to his disadvantaged youth. As described above, Mr.  
 22 Hal grew up on the streets, and was exposed to extreme violence, homelessness, and the lack of a  
 23 positive parental influence. He was left to care for his younger brothers and often had to scrounge to  
 24 get them enough food to eat. Lenity is appropriate.

25       Mr. Hal's diminished capacity should also be considered in mitigation. The guidelines have  
 26 long recognized that a below sentence is warranted when someone commits an offense while  
 27 suffering from significantly reduced mental capacity. *See, e.g.* USSG § 5K2.13, *United States v.*  
 28 *Cantu*, 12 F.3d 1506, 152, 1516 (9th Cir. 1993) ("The goal . . . is lenity towards defendants whose

1 ability to make reasoned decisions is impaired"); *United States v. Lewinson*, 988 F.2d 1005 (9th Cir.  
 2 1993) (four level departure based on depression). Here, Mr. Hal suffers from ongoing trauma. In  
 3 *Lewinson*, the court departed by four levels based upon the defendant's depression. Here, a variance  
 4 based upon Mr. Hal's reduced mental capacity is equally appropriate.

5 Moreover, scientists increasingly observe connections between childhood trauma like Mr. Hal's  
 6 and neurological deficits. There is a growing body of peer-reviewed studies linking Adverse  
 7 Childhood Experiences (ACEs) with long-term changes in the brain. Anda, Felitti, et. Al. *The*  
 8 *enduring effects of abuse and related adverse experiences in childhood: A convergence of evidence*  
 9 *from neurobiology and epidemiology*, Eur. Arch. Psychiatry Clin. Neurosci. 2006 April; 256(3) 174-  
 10 186<sup>2</sup> (concluding that "the graded relationship of the ACE score to 18 different outcomes<sup>3</sup> in multiple  
 11 domains theoretically parallels the cumulative exposure of the developing brain to the stress response  
 12 with resulting impairment in multiple brain structures and functions.") Moreover, an article in *The*  
 13 *Atlantic* discussed this research, noting the pioneering work of physicians Anda and Felitti cited  
 14 above:

15 Unpredictable childhood trauma has long-lasting effects on the brain. Studies have shown  
 16 that people with adverse childhood experiences are more likely to suffer from mental-and  
 17 physical health disorders, leading people to experience a chronic state of high stress  
 18 reactivity. One study found that children exposed to ongoing stress released a hormone  
 19 that actually shrank the size of the hippocampus, an area of the brain that processes  
 memory, emotion, and stress management . . . 'Chronic, unpredictable stress is toxic  
 when there is no reliable adult,' said Donna Jackson Nakazawa, the author of *Childhood*  
 Disrupted and a science journalist who focuses on the intersection of neuroscience and  
 immunology.

20 Cindy Lamonde, *When Kids Have to Act Like Parents, It Affects Them for Life*, The Atlantic,  
 21 October 26, 2017.<sup>4</sup> This was clearly the case with Mr. Hal, who suffered a number of ACE's and  
 22 scored 9 out of 10 on the ACE questionnaire. Exhibit E. The ACE's which Mr. Hal suffered include  
 23 abuse, neglect, household dysfunction, alcoholism and other factors. Exhibit E.

24 Unless or until it is treated, childhood trauma will continue to affect decision making later in  
 25

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27           <sup>2</sup> Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3232061/>

28           <sup>3</sup> These 18 areas were subcategories of the following: Mental Disturbances, Somatic Disturbances,  
 Substance Abuse, Impaired Memory of Childhood, Sexuality, and Perceived Stress.

<sup>4</sup> Available at <https://www.theatlantic.com/family/archive/2017/10/when-kids-have-to-parent-their-siblings-it-affects-them-for-life/543975/>

1 life:

2 [I]n a justice system built upon the idea of choice and personal responsibility, experts  
 3 say the path to trouble may begin long before an individual has any say in the matter.  
 4 What happens to people in childhood can make a difference in whether they end up in a  
 5 prison cell, or whether they are even wired to make rational decisions.

6 Burch, Audra, *A Gun to His Head as a Child, In Prison as an Adult*, NEW YORK TIMES (October  
 7 15, 2017). It is often repeated by courts that childhood trauma is not an excuse for an adult's behavior  
 8 and that a grown person has plenty of time to decide what type of adult he should be. However,  
 9 childhood trauma does not have an expiration date. Indeed, trauma is a major factor "that shapes . . .  
 10 criminal behavior in adulthood." *Id.* It is a "huge factor within the criminal justice system."

11 Studies also demonstrate that counseling as well as cognitive behavioral programs are the most  
 12 effective ways to address those deficits. Counseling and directly addressing the trauma is a far more  
 13 effective way to reduce recidivism than imprisonment. Based upon all of this research, a variance  
 14 and imposition of either a custodial sentence of 12 months plus one day or a term of probation is  
 15 appropriate.

#### 16       C.     **Mr. Hal's Youth Warrants A Variance**

17 Mr. Hal was just 22 years old at the time of the offense in this case. He will be sentenced  
 18 approximately one week before he celebrates his 23<sup>rd</sup> birthday on July 11. Although people are  
 19 deemed adults when they turn 18 years old, the U.S. Sentencing Commission ("U.S.S.C.") has  
 20 recognized neurological research that shows brain development is not fully realized in most people  
 21 until they turn 25 years old. More specifically, researchers have found that the prefrontal cortex of  
 22 the brain—which "is utilized in impulse control, emotional reactions, executive function and decision  
 23 making"—is the last part of the brain to develop. It "is not complete by the age of 18...development  
 24 continues into the 20s" and "most researchers reference 25 as the average age at which full  
 25 development has taken place."<sup>5</sup> In other words, research shows that the brain of a defendant who  
 26 commits a crime at the age of 22 is undeveloped.

27       The Supreme Court has repeatedly recognized that "because juveniles have lessened culpability

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28       <sup>5</sup> See United States Sentencing Commission, "Youthful Offenders in the Federal System," p. 6, 7  
 29 available at [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170525\\_youthful-offenders.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170525_youthful-offenders.pdf).

1 they are less deserving of the most severe punishments.” *Graham v. Florida*, 560 U.S. 48, 68 (2010).  
 2 It has abolished the death penalty and life without parole sentences for all juveniles. *See Roper v.*  
 3 *Simmons*, 543 U.S. 551 (2005); *Miller v. Alabama*, 567 U.S. 460 (2012). The Supreme Court  
 4 reasoned that because “juveniles have a ‘lack of maturity and an underdeveloped sense of  
 5 responsibility’; they ‘are more vulnerable or susceptible to negative influences and outside pressures,  
 6 including peer pressure’; and their characters are ‘not as well formed.’” *Graham*, 560 U.S. at 68  
 7 (quoting *Roper*, 543 U.S. at 569-70). While a “juvenile is not absolved of responsibility for his  
 8 actions...his transgression ‘is not as morally reprehensible as that of an adult.’” *Graham*, 560 U.S. at  
 9 68 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)). Because of these salient factors, “it  
 10 is difficult even for expert psychologists to differentiate between the juvenile offender whose crime  
 11 reflects . . . transient immaturity, and the rare juvenile offender whose crime reflects irreparable  
 12 corruption.” *Id.*

13       While Mr. Hal’s young age is not an excuse for his actions in this case, his young age is  
 14 mitigating. In this case, there is reason to hope that with the resources and stability provided to him,  
 15 Mr. Hal will become a productive, law-abiding adult. His letter shows insight into what has caused  
 16 him to make such bad decisions. Exhibit A. In the letter, Mr. Hal also discusses his goals and what he  
 17 is doing to better himself. *Id.* What Mr. Hal wants most is to be a father and constant presence in his  
 18 son’s life, in contrast to his own father who was mostly absent, but also violent towards his children  
 19 when he was present. Exhibit A. By the time of this sentencing, Mr. Hal will have missed another  
 20 Father’s Day away from his son. While he has no one to blame but himself, he is determined to do  
 21 better.

22       Mr. Hal’s conduct in this case is exemplary of a “juvenile offender” whose crime reflects  
 23 “transient immaturity” rather than of “irreparable corruption.” His youth is a mitigating factor for this  
 24 Court to consider and a sentence of five years probation with home detention (which carries the  
 25 possibility of a far more severe sentence should Mr. Hal not be successful) is appropriate. It would  
 26 mean that Mr. Hal is supervised by the Courts until he is 28 years old and provide five years to the  
 27 Court during which he can demonstrate that his actions were the result of “transient immaturity.”  
 28

1           **D. Nature and Circumstances of the Offense**

2       Mr. Hal pled guilty to a violation of 18 U.S.C. § 922(g)(1) – felon in possession of a firearm  
 3 and ammunition. As discussed above, this is not a crime of violence and Mr. Hal did not intend to use  
 4 the firearm to commit crimes of violence. Rather, Mr. Hal has been traumatized and possessed the  
 5 gun because he was afraid for his safety but, yet, felt compelled to go to an area where he felt unsafe  
 6 in order to connect with friends of his deceased brother. Mr. Hal is aware that he needs to address that  
 7 trauma and cannot, under any circumstances, continue to possess a firearm in the future.

8       The government argues that this is a serious offense because of the type of weapon and fact that  
 9 there were children in the car. Govt. Memo at p.6. Mr. Hal does not dispute these facts. However, it  
 10 was not the case that Mr. Hal and the driver were headed out to the streets or going to associate with  
 11 others. He was headed home. Mr. Hal was on his way home to his mother's house and had gotten a  
 12 ride from a friend who picked him up with his two children in the back seat. The car was pulled over  
 13 while the driver was giving Mr. Hal a ride home.

14      Moreover, Mr. Hal's criminal history does not include violence. It is true that at 22 years of  
 15 age, he has amassed a handful of convictions which place him in criminal history IV. But Mr. Hal is  
 16 still young and has the potential to turn his life around with the assistance of the probation  
 17 department. He is determined to put his days of cycling in and out of jail behind him. For these  
 18 reasons, the nature and circumstances of the offense do not undermine Mr. Hal's requested sentence.  
 19 A sentence of 12 months plus one day of custody is also consistent with the government's  
 20 recommendation that Mr. Hal be sentenced to a custodial sentence.

21           **E. The Need to Avoid Unwarranted Disparity**

22      In fashioning an appropriate sentence in this case, the Court must avoid unwarranted sentencing  
 23 disparities among defendants with similar records who have been found guilty of similar conduct. 18  
 24 USC § 3553(a)(6). *See also United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1055 (9<sup>th</sup> Cir. 2009).  
 25 The need to avoid unwarranted disparity is something that the courts look to in determining what is  
 26 appropriate. In this case, Mr. Hal will plead guilty to being a felon in possession of a firearm. In  
 27 determining an appropriate sentence, the Court may compare him with similarly situated defendants  
 28 in determining the appropriate sentence.

A sentence of 12 months plus one day custody or five years probation would not lead to unwarranted sentencing disparities. Other defendants in the district convicted of being a felon in possession of a firearm—including some defendants facing higher advisory Sentencing Guideline ranges—have received probationary sentences. What does distinguish Mr. Hal from those listed below is that the individuals listed below were released on bail and able to prove themselves prior to sentencing, whereas Mr. Hal did not have that opportunity. However, Mr. Hal can demonstrate to the Court that he needs no further time in prison as well, should the Court now give him the opportunity.

Client Initials	Case No.	Charge(s)	USSG Range	Sentence	Pretrial Custody
L.A	19-0078 (JST)	Felon in possession	37-46	5 years probation plus 6 months home detention after deferring sentence for 1 year	3 days
D.G.	17-20-CRB	Felon in possession	46-57	Time served after sentencing deferred for a year	1 day
J.B.	19-258 PJH	Felon in possession	33-41	5 years probation	7 days
O.C.	15-438-RS	Felon in possession	30-37	5 years probation	14 days
A.C.	16-511-VC	Felon in possession (2 counts)	168-210	5 years probation	6 days
S.E.	14-43-JST	Felon in possession	37-46	5 years probation	1 month
A.M.	18-416 JD	Felon in possession	37-46	Time served after sentencing deferred 6 months	3 weeks
R.S.	17-256 JD	Felon in possession	30-37	Time served after sentencing deferred for a year	3 days

Even if the Court is not fully convinced that Mr. Hal has demonstrated his ability to change such that a “time served” sentence would be appropriate, a sentence of five years probation would achieve the same result as a deferred sentencing in that Mr. Hal will still face the advisory guideline range of 37-46 months and up to ten years imprisonment if he appears before the Court during that five year period. Under these circumstances, any additional sentence of confinement at this time would be greater than necessary to achieve the goals of sentencing.

#### **F. Obtaining Treatment in the Most Effective Manner**

“The underlying purposes of sentencing include not only punishment and deterrence, but also the provision of treatment to a defendant in need of it.” *United States v. Bad Marriage*, 392 F.3d 1103, 1114 (9th Cir. 2004) (citing 18 U.S.C. § 3553(a)(2)(D)). Furthermore, “Congress intended supervised release to assist individuals in their transition to community life. Supervised release

1 fulfills rehabilitative ends, distinct from those served by incarceration.” *United States v. Johnson*,  
2 529 U.S. 53, 59 (2000) (citing 18 U.S.C. § 3553(a)(2)(D)). A sentence of 12 months custody plus  
3 one day or five years of probation will allow Mr. Hal to continue to obtain treatment and program  
4 while he is out of custody, with the assistance of his probation officer. Mr. Hal is an excellent  
5 candidate for the re-entry court program, the Courage to Change class, counseling, and any other  
6 treatment recommended by his probation officer. No additional time in custody at this time is  
7 warranted or needed in order for Mr. Hal to obtain treatment in the most effective manner.

8 **IV. CONCLUSION**

9 For the reasons described above, Mr. Hal respectfully requests that the Court sentence him to a  
10 term of 12 months plus one day custody or five years probation (either of which can be accompanied  
11 by a term of home detention).

12 Dated: June 18, 2021

13 Respectfully submitted,

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16 /S  
17 JOYCE LEAVITT  
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